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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) MM Docket No. 96-70
)
UNDER HIS DIRECTION, INC.)
)
Order to Show Cause Why the)
License for Station KUHD(AM))
Port Neches, Texas Should)
Not Be Revoked)

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By Order to Show Cause and Hearing Designation Order, DA 96-466, released April 1, 1996, ("OSC"), the Assistant Chief, Audio Services Division, Mass Media Bureau designated the above captioned application of Under His Direction, Inc ("UHD") for hearing on the following issues:

(1) To determine whether Under His Direction, Inc. has the capability and intent to expeditiously resume the broadcast operations of KUHD(AM), consistent with the Commission's Rules.

(2) To determine whether Under His Direction, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine in light of the evidence adduced pursuant to the foregoing issues, whether Under His Direction, Inc. is qualified to be and remain the licensee of KUHD(AM).

2. The OSC placed the burden of proceeding and the burden of proof with respect to the issues on the Mass Media Bureau. It also specified that if it is determined that the hearing record

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does not warrant an Order revoking the license for UHD's station KUHD(AM), Port Neches, Texas, it shall be determined whether an Order of Forfeiture shall be issued in an amount not to exceed \$250,000 for the willful and repeated violation of Section 73.561 and/or 73.1750 of the Commission's Rules.

3. A hearing was held in this proceeding on July 24, 1996 and the record was closed on that date.

Proposed Findings of Fact

4. Mark A. Peterson (Peterson) is the President and a director of UHD, the non-profit licensee of AM station KUHD(AM), Port Neches, Texas. UHD acquired the assets of KUHD(AM) and the KUHD(AM) license from the Church of the Christian Crusade, Inc. ("CCC"), on September 9, 1993. As part of the sale, UHD executed a promissory note in the amount of \$60,000 to CCC. Peterson was able to purchase the station from CCC because CCC had defaulted on an employment agreement with him. Part of Peterson's employment agreement provided that, if CCC could not pay him, he would be granted an option on the station. KUHD(AM) Ex. 1, p. 1; Tr. 79-80; KUHD(AM) Ex. 1, attachment D, p. 1.

5. On August 18, 1994, KUHD(AM) went silent. UHD notified the Commission by telephone of the station's silent status. By letter dated January 6, 1995, UHD informed the Commission that "due to extreme financial hardship" it was requesting an STA to

remain off the air temporarily. UHD stated that it was seeking "alternative sources of financing" and expected "to return to the air and be operational within the next 90 days." MMB Ex. 1, attachment 1; Tr. 71.

6. Based on the representations made by UHD, the Audio Services Division ("ASD"), by letter dated February 25, 1995, granted UHD's request to remain silent. The letter specified that UHD's authority to remain silent was to expire "three months from the date of this letter." In its letter, the ASD stated that "[a]ny further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations." Subsequently, the February 25, 1995, date on the letter was changed to April 25, 1995. MMB Ex. 1, attachments 2 and 3.

7. KUHD(AM) was not returned to the air within 90 days as promised by UHD in its letter of January 6, 1995. On February 28, 1995, a portion of KUHD(AM)'s assets were seized by creditors. The seized assets included the station's microwave receiver, towers, ground system and out buildings. On March 8, 1995, the station's assets were sold at public auction. UHD also owed back rent to the studio site owner. KUHD Ex. 1, p.1. Tr. 71-73.

8. UHD was unsuccessful in securing funds to acquire

equipment to return the station to the air. Therefore, in May of 1995, UHD sought to return the license to CCC in exchange for CCC's forgiveness of debt owed it by UHD. To effectuate the return of KUHD(AM) to CCC, Peterson had prepared a document entitled "Conveyance in Lieu of Foreclosure" ("Conveyance") for the purpose of conveying the license back to CCC. The Conveyance specifies that CCC is to pay the FCC filing fees and legal fees involved in the reassignment of the station. Peterson signed the Conveyance on May 26, 1995, and sent it to CCC for signing. CCC, however, never signed the document. KHUD Ex. 1, p. 1 and 2, attachment D and Tr. 76-77.

9. By letter dated July 26, 1995, UHD informed the Commission that UHD's licensed station, KUHD(AM), was presently off the air and requested an extension of its STA to remain off the air. In support of this request, UHD stated that "we have obtained an agreement with the mortgage holder of the assets of KUHD(AM) and will be consummating our agreement very shortly." UHD further stated that its application for transfer of control "should follow" within 30 days. MMB Ex. 1, attachment 4.

10. Based on the representation by UHD that it would be filing an assignment application within 30 days, ASD, by letter dated August 2, 1995, granted UHD's request and authorized KUHD(AM) to remain silent until February 2, 1996. MMB Ex. 1, attachment 5.

11. When CCC failed to return the signed Conveyance agreement, Peterson spoke with CCC's business manager who told him that the reason for the delay was that CCC was having trouble reaching an agreement with the tower site owner. Peterson was also told that CCC was having trouble coming up with money and that there were other things CCC was trying to accomplish. In Peterson's words, "they just continued to stall." Despite this stall, Peterson did not seek to withdraw the document he had submitted to CCC because he was afraid that, if he did so, he would be liable for the \$60,000 debt that the transfer to CCC would cancel. He was also concerned about potential lawsuits against him that might be filed if the transfer did not occur. Tr. 78.

12. On January 28, 1996, a few days before the STA was to expire, Peterson called CCC. At this time, UHD had no assets which it could use to resume broadcast operations of KUHD(AM). CCC returned his call on January 30, 1996. At this time CCC informed Peterson that it did not intend to go through with the conveyance in lieu of foreclosure. Prior to calling UHD on January 28, 1996, Peterson's last attempt to communicate with CCC was in 1995; after Thanksgiving and before the Christmas season began. Tr 74, 82-83.

13. After learning that CCC was not going to reacquire KUHD(AM), Peterson called the Commission to explain his

situation. On January 30, 1996, he spoke with an attorney at the Commission who told him that if UHD wanted to obtain a further extension of time to remain silent, it would have to show the FCC that it had an agreement with a new buyer. Peterson testified that he understood this to mean that UHD could not file a request to extend its STA until it had secured an agreement with a new buyer. KUHD Ex 1, p. 2.

14. The day after his conversation with the attorney at the Commission, Peterson contacted the persons who would later become the principals of Vision Latina, Inc. ("Vision"), who in the past has shown an interest in acquiring KUHD(AM). By the end of March 1996, Vision Latina had incorporated, reached terms with KUHD(AM)'s asset holders and agreed on terms with UHD for acquiring the station. An application for assignment of KUHD(AM) from UHD to Vision Latina was filed with the Commission on May 24, 1996. If the Commission finds that UHD should retain its license, UHD intends to recommence operations as soon as practicable by negotiating a time brokerage agreement with Vision Latina. KUHD Ex. 1, p. and KUHD Ex. 2, p.2.

15. A search of the Commission's files conducted just prior to designation did not reveal that the promised assignment application was on file. MMB Ex. 1, p. 3.

Proposed Conclusions of Law

1. The issues in this case seek to determine whether, in light of the licensee's dilatory record, the licensee has the capability and intent to expeditiously resume the broadcast operations of KUHD(AM) and whether the licensee violated Sections 73.1740 and 73.1750 of the Commission's Rules. In designating this case for hearing, the Commission noted that KUHD(AM) has been off the air since January 6, 1995 and that the special temporary authority permitting the station to remain silent had expired on February 2, 1996.

2. The record here reveals that UHD can not be relied upon to return KUHD(AM) to the air. In the past UHD has not delivered on its promises to the Commission. In January 1995, UHD told the Commission that it expected to return KUHD(AM) to the air in 90 days. It did not do so. In a letter to the Commission dated July 26, 1995, UHD stated that it had obtained an agreement with the mortgage holder of its assets and that an application for transfer of control of the licensee should follow within 30 days. No such application for transfer of control was ever filed. In each of these instances, the Commission, relying on UHD's promises, granted UHD an STA to remain silent. In each instance UHD did not follow through and the station remained silent.

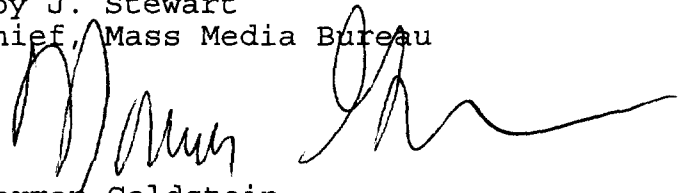
3. Since KUHD(AM) went silent, UHD's financial condition has deteriorated to the point where it is not capable of

returning KUHD(AM) to the air except by transferring it to a third party. In May 1995, UHD tried giving KUHD(AM) back to CCC, from which it had purchased the station, in exchange for the cancellation of debt UHD had incurred in acquiring the station. But, after stalling for some eight months, CCC decided that it was not interested in reacquiring the station. While Peterson received word of CCC's decision at the end of January, only a few days before the STA was to expire on February 2, 1995, the record also shows that, prior to the end of January 1996, Peterson's last attempt to communicate with CCC was in late November or early December 1995. Thus, Peterson's sat back and did nothing until his STA was about to expire and then, when he discovered that CCC was not going to enter into an agreement with him, called the Commission for help. UHD never filed a request for a further extension of its STA to remain silent and it has been off the air without authority since February 2, 1996.


4. The record is clear that to this day UHD has neither the capability nor the intent to return KUHD(AM) to the air. It does not have the money to do so. What UHD proposes is to transfer KUHD(AM) to Vision Latina in the hope that this company will return the station to the air. This, however, is a false hope. It is the Mass Media Bureau's policy not to approve the transfer of stations which are silent and that have been designated for hearing. Consequently, there is no viable proposal for returning KUHD(AM) to the air and revocation of the license is mandated.

5. In conclusion, UHD has failed to demonstrate that it has either the capability or the intent to expeditiously resume broadcast operations of KUHD(AM), consistent with the Commission's Rules and, consequently, its license must be revoked.¹

Respectfully submitted,
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September 16, 1996



¹ In light of the recommendation that the license of UHD be revoked, a forfeiture is not warranted.

CERTIFICATE OF SERVICE

Natalie Moses a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 16th day of September 1996, sent by regular United States mail, copies of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to:

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